Commonwealth of Massachusetts
Supreme Judicial Court

DAR NO. _____
APPEALS COURT DOCKET NO. 2023-P-0217

JOHN BARRANCO,
Plaintiff-Appellant,

v.

CONTRIBUTORY RETIREMENT APPEAL BOARD and TEACHERS' RETIREMENT BOARD,
Defendants-Appellees.

On Appeal from a Decision and Judgment of the
Superior Court Department of the Massachusetts Trial Court – Suffolk County.

Appellant Barranco's Application for Direct Appellate Review

Nicholas Poser (BBO #546102)
48 Franklin Street
Watertown, MA 02472
(617)-437-1779
nicklaw@aol.com

Thomas R. Kiley (BBO #271460)
Meredith G. Fierro (BBO #696295)
CEK BOSTON, P.C.
One International Place, Suite 1820
Boston, MA 02110
(617)-439-7775
tkiley@ceklaw.net
mfierro@ceklaw.net

Plaintiff-Appellant John Barranco requests direct appellate review in this Court pursuant to Mass. R. App. P. 11(a). Direct appellate review is warranted because this case involves novel questions of statutory interpretation regarding Section 91 of the Retirement Law, G.L. c. 32.

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

For years, John Barranco was employed by two separate entities. Add. 18. He served as the Executive Director for both the Merrimack Special Education Collaborative ("the Collaborative"), a public entity, and the Merrimack Education Center, Inc., ("MEC"), a related private non-profit organization. *Id.* His compensation was divided between them, and only the portion of his compensation attributed to the Collaborative was deemed to be "regular compensation" counted towards his retirement allowance. His MEC compensation was not. The Collaborative was among several public and private entities that engaged MEC. Add. 21-22. In 2005, Barranco retired from his employment with the Collaborative and began collecting his retirement allowance from the Massachusetts Teachers' Retirement System ("MTRS"). His retirement allowance was based solely on his Collaborative compensation. Add. 18. Barranco continued to work for MEC and receive an annual salary. Add. 22-23. It was calculated based on the company's annual revenues, a portion of which was earned

for services provided by MEC to the Collaborative. Add. 22-23. It was taxed and social security contributions were taken from it, just as they had always been.

In 2010 and 2011, MTRS stopped paying Barranco's retirement allowance, claiming his earnings from MEC were limited by G.L. c. 32, § 91, and that it was entitled to "recoup" $815,746.77 he earned through his public service for the Collaborative as "excess earnings" from his employment at MEC. Add. 23-24. Put simply, the MTRS seized personal income Barranco earned from his long-time private employer.

Barranco sought relief from the Division of Administrative Law Appeals ("DALA"), which ruled in favor of MTRS. Add. 24. Barranco filed objections to DALA's decision with the Contributory Retirement Appeal Board ("CRAB"), but CRAB affirmed DALA's decision. *Id.* Barranco then filed an action against CRAB and MTRS in Superior Court seeking judicial review pursuant to G.L. c. 30A, § 14. Add. 24. After the parties filed cross-motions for judgment on the pleadings, the Superior Court allowed the motions of CRAB and MTRS and denied Barranco's motion. Add. 35.

STATEMENT OF THE ISSUES

At the time John Barranco was hired and when he retired, General Laws c. 32, § 91 prohibited public retirees from being paid "for any service rendered to the commonwealth or any county, city, town or district." Nevertheless, under subsection (b), public retirees could "be employed in the service of the commonwealth, county, city, town, or district," subject to certain limitations on their hours and earnings. And Section 91, unlike Section 91A, which deals with those retired for disabilities, does not apply to total earnings, including from private sector employment. Public retirees employed pursuant to subsection (b) were required to annually certify the number of hours of their employment and the amount of their earnings and to return any "excess earnings" to the person responsible for paying their compensation. *See* G.L. c. 32, § 91(c). The questions presented by this appeal are:

I. Whether Section 91 applies to educational collaboratives;

II. Whether prior to 2009, the limitation on post-retirement earnings contained in Section 91 applied to a public retiree's employment by a private entity; and

III. Whether the Appeals Court's holding in *Flanagan v. Contributory Retirement Board* should be corrected because retirement boards do not have authority to obtain excess earnings.

ARGUMENT

I. Section 91 Does Not Apply to Educational Collaboratives.

General Laws c. 32, § 91, applies only to a public retiree receiving a pension or retirement allowance from "the commonwealth" or any "county, city, town, district, or authority."[1] *See* G.L. c. 32, § 91(a)("No person while receiving a pension, disability pension or retirement allowance from the commonwealth, or from any county, city, town, district. . . shall. . ."). An educational collaborative is not a county, city, town, district, or authority. It is instead a unique species of governmental body created by statute. Pursuant to G.L. c. 40, § 4E, an educational collaborative is established when "[t]wo or more school committees of cities, towns and regional school districts and boards of trustees of charter schools. . . enter into a written agreement to provide shared programs and services."

The Superior Court incorrectly concluded that education collaboratives are covered by § 91(a) because they "are public entities under G.L. c. 40, § 4E, and are joint projects of their member municipalities and school districts."[2] Add. 26.

---

[1] The version of § 91 in effect at the time of Barranco's retirement did not include authorities in its list of covered public entities. *See* St. 2009, c. 21 (adding "authority").

[2] While an educational collaborative is a public entity, it is different from a municipality or school district. Employees of an educational collaborative may participate in the state retirement system but, unlike a municipality or school

When the Legislature has intended to include education collaboratives in the sweep of a statute, it has done so expressly.[3] Applying § 91 to *all* public entities rather than the specific categories of public entities enumerated in the law, as the Superior Court appears to do, would contravene legislative intent. State lawmakers have used the term "public entity" in numerous other statutes.[4] And they have referenced "other member unit of a retirement system" to broadly encompass public retirees. *See* G.L. c. 32, § 19A. Because the Legislature carefully employed these terms in other statutes, those terms are not to be implied in § 91.

"When interpreting the absence of language in an otherwise detailed and precise statute, [courts] regard an omission as purposeful." *City Elec. Supply Co. v. Arch Ins. Co.*, 481 Mass. 784, 788 (2019). Section 91 is exceedingly precise: it explicitly lists the public entities to which it applies. Its exclusion of educational collaboratives from that list thus ends the inquiry. *See Commonwealth v. Garvey*, 477 Mass. 59, 62 (2017)("If the meaning of the statutory language is clear and unambiguous, our inquiry ends.").

---

district, the collaborative must reimburse that system for the cost of benefits received by their employees. *See* G.L. c. 32, § 28(4)(c). And unlike a teacher employed by a school district, a teacher employed by an educational collaborative is not entitled to tenure or discharge process under G.L. c. 71, §§ 41 and 42.

[3] *See, e.g.*, G.L. c. 29 § 27C; G.L. 40, § 4A ½; G.L. c. 69, § 1; G.L. c. 70, § 40.

[4] *See, e.g.*, G.L. c. 21, § 33; G.L. c. 21E, § 22; G.L. 23G, § 47; G.L. c. 29, § 49C.

In *MBTA Retirement Board v. State Ethics Commission*, 414 Mass. 582, 587 (1993), this Court held that the MBTA Retirement Board was not subject to the conflict of interest law because it was not a department of state government or an independent state authority, district, commission, instrumentality or agency. *See* G.L. c. 268A, § 1(p)(defining "state agency"). Likewise, in *Perez v. Bay State Ambulance & Hosp. Rental Service, Inc.*, 413 Mass. 670 (1992), the Court held that emergency medical technicians did not qualify as "providers of health care" under G.L. c. 231, § 60B, because they were not included in the Legislature's list of providers enumerated in the statute. This Court should adhere to the principles applied in *MBTA Retirement Board* and *Perez* by declining to read the terms "educational collaborative" or "public entity" into the statute.

II. Prior to 2009, Section 91 Did Not Limit Post-Retirement Employment for a Private Corporation.

In 2005, when Barranco retired from public service, Section 91(a) prohibited a person "while receiving a pension, disability pension or retirement allowance from the commonwealth, or from any county, city, town, or district, after the date of his retirement" from being "paid for any service rendered to the commonwealth or any county, city, town or district." Subsection (b) provided that "in addition to *and notwithstanding* the foregoing provisions of this section or similar provisions of any special law, any person who has been retired and who is receiving a pension or retirement allowance, under the provisions of this chapter or any other general

or special law, from the commonwealth, county, city, town, or district, may. . . be employed in the service of the commonwealth, county, city, town, or district."[5] (Emphasis added). Subsection (a) thus prohibited payment for "any service rendered to" an enumerated public entity while subsection (b) permitted "employ[ment] in the service of" such entities, subject to hours and earnings restrictions.

"Service" is defined in G.L. c. 32, §1, as "*service as an employee in* any governmental unit for which regular compensation is paid." (Emphasis added). Section 1 instructs, however, that the definitions contained therein are "*conclusive* only as used in sections 1 through 28." The meaning of the term "service" in § 91 is therefore initially "construed according to the common and approved usage of the language," G.L. c. 4, § 6, which "may be derived from . . . dictionary definitions," *Drake v. Leicester*, 484 Mass. 198, 200 (2020). *Webster's New Universal Unabridged Dictionary* contains twenty-two definitions of "service." There are two definitions relevant to this case: defining service as "employment,

[5] Service as an outside consultant in an entity providing services is different in kind than service as an employee. In 2009, the Legislature amended § 91(b) to limit the hours and compensation of a public retiree employed in the service of the commonwealth "as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority." St. 2009, c. 21 This amendment applied to all members of retirement systems who retired *after July 1, 2009*, and thus was inapplicable to Barranco, who retired from public service in 2005. St. 2009, c. 26.

especially public employment" or as "work done or duty performed for another or others; a servicing; professional services, repair service, a life devoted to public service."

To determine which definition of "service" should control its interpretation of § 91, the Court should examine the provision as a whole. *See Lynch v. Crawford*, 483 Mass. 631, 639 (2019)("We examine all the provisions of a statute, not just isolated phrases, and seek, where possible, to construe the various provisions of a statute in harmony with one another, recognizing that the Legislature did not intend internal contradiction.")(internal quotation and citation omitted). The prohibition in subsection (a) applies to "any service rendered to the [enumerated entity]," while the exception authorized by subsection (b) uses the phrase "employment, in the service of the [enumerated entity]." Interpreting "service" to refer to an individual's employment with an enumerated entity is the only reasonable construction of § 91 that reconciles its differential phraseology.

This interpretation also accords with the public policy furthered by § 91, which is to prevent public retirees from retiring from one position in government, receiving a pension, *accepting employment elsewhere in government*, and then making *more money* than if the employee had not retired. *Bristol County. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 447 (2006). Barranco retired from public service, *continued his private employment* with MEC, and

made *less money* than he would have had he not retired. MTRS confiscated the bulk of his private earnings.

III. The Appeals Court's Holding in *Flanagan v. Contributory Retirement Board* Should Be Corrected Because Retirement Boards Do Not Have Authority to Lay Claim to Excess Earnings Under Section 91.

Section 91(c) requires a public employee covered by subsection (b) to "certify to his employer and the treasurer or other person responsible for the payment of the compensation for the position in which he is to be employed, the number of days or hours which he has been employed in any such calendar year and the amount of earnings therefrom." If the public employee's number of hours exceeds 960, the employee must return the excess earnings "to the appropriate treasurer or other person responsible for the payment of compensation." If the public employee does not return the excess earnings, an action in contract may be brought "by the appropriate treasurer or other person *responsible for the payment of the compensation of any such person*." (Emphasis added). Accordingly, the only person authorized by the statute to bring an action to collect excess earnings from a public retiree is the individual responsible for compensating the employee. The statute does *not* authorize a retirement board to bring such an action. Nor does it authorize a retirement board to lay claim to earnings paid by a *private entity*.

In *Flanagan v. Contributory Retirement Bd.*, 51 Mass. App. Ct. 862 (2001), the Appeals Court reversed a decision by the Superior Court that only an employer, and not a retirement board, could take action to recover excess earnings under § 91(c). The Appeals Court held that a retirement board has "implicit authority" to lay claim to excess earnings despite the absence of any reference to a retirement board in § 91, citing the general authority of a retirement board under G.L. c. 32, § 20(5)(b), to "have such other powers and shall perform such other duties and functions as are necessary to comply with such provisions." That decision was never appealed to this Court. Plaintiff-Appellee Flanagan did not even file a brief in the Appeals Court, depriving it of the benefit of legal research and argument from the opposing party. *Flanagan*, 51 Mass. App. Ct. at 859.

The Appeals Court's holding in *Flanagan* is incorrect because an administrative agency cannot "exceed the authority conferred by the statutes by which the agency was created." *Massachusetts Mun. Wholesale Elec. Co. v. Massachusetts Energy Facilities Siting Council*, 411 Mass. 183, 201 (1991). Retirement boards are not mentioned in § 91, and there is no provision in the retirement system statute that authorizes them to take compensation paid by an employer. Section 91(c) is especially inapplicable when applied to *private*

compensation, as is the case here. It is also directly contrary to G.L. 32, § 19, which bars attachment, assignment, and execution on pensions.[6]

The general provisions in § 20(5)(b) do not save MTRS's action because granting it authority to take monies paid by an employer is not "necessary to comply" with the provisions of the retirement law. G.L. c. 32, § 20(5)(b). Section 91 sets forth a specific mechanism for compliance that places the onus on public retirees and their public employers. This makes sense because the excess earnings are exchanged between those parties, and the public employer is entitled to receive a public retiree's § 91(c) certification. As a retirement board is not entitled to receive such certification, it cannot reasonably be implied that state lawmakers intended to implicitly authorize it to collect excess earnings.

REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is warranted because this case presents novel questions regarding the proper interpretation of § 91 that affect the public interest. Specifically, this case raises two statutory interpretation questions of first impression: (1) whether § 91 applies to educational collaboratives when they were not included in the list of public entities specifically enumerated in the statute; and

[6] *Flanagan* failed to discuss this provision.

(2) whether, prior to 2009, the limitation on post-retirement earnings applied to a public retiree's employment by a private non-profit organization.[7]

This case also presents an opportunity for the Court to evaluate whether the Appeals Court incorrectly held in *Flanagan* that a retirement board has authority to lay claim to an employee's excess earnings under § 91, even though it is not responsible for paying the employee's compensation. These questions have significance well beyond the scope of this case and thus are "of such public interest that justices require final determination by the full Supreme Judicial Court." Mass. R.A.P. 11(a).

CONCLUSION

For the foregoing reasons, Appellant-Plaintiff John Barranco respectfully requests that this Court allow the application for direct appellate review.

Respectfully Submitted,

John B. Barranco,

By his attorneys,

/s/ Nicholas Poser

[7] Due to the prolonged appeal process required by G.L. c. 32, involving appeals of a retirement board's decision to two administrative agencies before ever reaching a court, there are other members with pending cases involving the proper interpretation of the pre-2009 version of § 91.

Nicholas Poser (BBO #546102)

(617) 437-1779
nicklaw@aol.com

/s/ Thomas R. Kiley
Thomas R. Kiley (BBO #271460)
Meredith G. Fierro (BBO #696295)
CEK Boston, P.C.
One International Place
Boston, MA 02110
(617) 439-7775
tkiley@ceklaw.net
mfierro@ceklaw.net

Dated: March 20, 2023

CERTIFICATE OF COMPLAINCE

I, Thomas R. Kiley, do hereby certify that foregoing document complies with all rules of court that pertain to the filing of briefs, including but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it contains 2,725 words in 14-point Times New Roman font as counted in Microsoft Word. The argument section of the brief complies with the applicable

length limit in Rule 11(b)(5) because it contains 1,891 words in 14-point Times New Roman font, as counted in Microsoft Word.

/s/ Thomas R. Kiley
CEK Boston, P.C.

CERTIFICATE OF SERVICE

I, Thomas R. Kiley, do hereby certify that on this 20th day of March 2023, I have caused a copy of the foregoing document to be served upon the following person(s) at the addresses below indicated, by eFileMA:

Nicholas Poser, Esq.
48 Franklin Street
Watertown, MA 02472
nicklaw@aol.com

David R. Marks
Douglas S. Martland
Office of the Attorney General
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
david.marks@mass.gov
douglas.martland@mass.gov

Ashley Freeman, Esquire

Senior Legal Counsel, Legal
Massachusetts Teachers' Retirement System
Main Office
500 Rutherford Avenue, Suite 210
Charlestown, MA 02129-1628
ashley.freeman@trb.state.ma.us

/s/ Thomas R. Kiley
CEK Boston, P.C.

ADDENDUM

NOTIFY 1818

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
DOCKET NO. 2084CV00311-B, H

JOHN BARRANCO,

Plaintiff

vs.

CONTRIBUTORY RETIREMENT APPEAL BOARD and
TEACHERS' RETIREMENT BOARD,[1]

Defendants

notice sent 08.09.22 (4) no

MEMORANDUM OF RULING ON CROSS-MOTIONS
FOR JUDGMENT ON THE PLEADINGS (Papers 17, 19, & 21)

Before 2005, Plaintiff John Barranco served as the Executive Director of both the Merrimack Special Education Collaborative (Collaborative), a public entity, and the Merrimack Education Center, Inc. (MEC), a private, non-profit entity that provided services to the Collaborative. In 2005, Barranco retired from his position at the Collaborative and began to receive monthly pension checks. While receiving these payments, he continued to work and be compensated as the Executive Director of MEC.

After conducting an investigation, the Massachusetts Teachers' Retirement System (MTRS) concluded that from 2005 to 2010, Barranco had received earnings from MEC that violated the post-retirement earning limits set by G. L. c. 32, § 91. MTRS sought to recoup those earnings, by withholding Barranco's pension payments. Barranco appealed to the Division of Administrative Law Appeals (DALA), which affirmed the MTRS decision. Barranco appealed

[1] Although identified as the Teachers Retirement Board by the plaintiff, this defendant is properly referred to as the Massachusetts Teachers' Retirement System.

the DALA decision to the Contributory Retirement Appeal Board (CRAB). CRAB adopted DALA's factual findings and affirmed its legal conclusions.

Barranco now seeks judicial review of CRAB's decision pursuant to G. L. c. 30A, § 14. He argues CRAB committed multiple errors of law, lacked substantial evidence for its determination of the value of services he provided, and violated his constitutional property rights. Following hearing May 5, 2022, and for the reasons that follow, Barranco's Motion for Judgment on the Pleadings (Paper 17) is **DENIED**, and the Cross-Motions of CRAB (Paper 19) and MTRS (Paper 21) are **ALLOWED**.

Statutory Framework

The payment of public pensioners for public service rendered after retirement is governed by G. L. c. 32, § 91. The statute is intended to address "a pivotal concern that, except in precisely limited circumstances, a member of the public employee retirement system who is receiving retirement benefits not accept other public employment and not become eligible for a separate pension." Bristol Cnty. Retirement Bd. v. Contributory Retirement Appeal Bd., 65 Mass. App. Ct. 443, 446 (2006). It "reflects a clear policy that an employee of a governmental unit in Massachusetts generally may not retire, receive a pension, accept employment elsewhere in the government, and, by combining her pension and her new compensation, make more money than if she had not retired." Id. at 447. See also, Flanagan v. Contributory Retirement Appeal Bd., 51 Mass. App. Ct. 862, 865, 868 (2001)(discussing the history of the statute; "Publicly administered and financed pension benefits are intended to support those who are retired from public service."); Pellegrino v. Springfield Parking Auth., 69 Mass. App. Ct. 94, 100 (2007)(same).

Under G. L. c. 32, § 91(a), "individuals collecting benefits via a State or local retirement program may generally not be paid for services rendered to the State or locality." Pellegrino, 69 Mass. App. Ct. at 97, citing G. L. c. 32, § 91(a). When Barranco retired in 2005, paragraph (a) stated, in pertinent part:

> No person while receiving a pension, disability pension or retirement allowance from the commonwealth, or from any county, city, town, or district shall, after the date of his retirement be paid for any service rendered to the commonwealth or any county, city, town or district.

G. L. c. 32, § 91(a).[2] See also Flanagan, 51 Mass. App. Ct. at 863 (describing paragraph (a) as stating a "broad rule").

The statute provides exceptions to this general limit on post-retirement earnings. Section 91(a) exempts retirees occupying certain listed governmental positions. Bristol Cnty. Retirement Bd., 65 Mass. App. Ct. at 447. For example, retirees may perform "contractual service, or service as a nonemployee, rendered to the general court" without running afoul of the prohibition. G. L. c. 32, § 91(a). Section 91(b), in turn, "sets forth a blanket exception" that permits public employment by a pension recipient so long as the recipient remains under an earnings cap. Bristol Cnty. Retirement Bd., 65 Mass. App. Ct. at 447. The 2005 version of paragraph (b) provided that:

> In addition to and notwithstanding the foregoing provisions of this section or similar provisions of any special law, any person who has been retired and who is receiving a pension or retirement allowance, under the provisions of this chapter or any other general or special law, from the commonwealth, county, city, town, district or authority, . . . may, subject to all laws, rules and regulations, governing the employment of persons in the commonwealth, county, city, town, district or authority, be employed in the service of the commonwealth, county, city, town, district or authority for not more than [960] hours in the aggregate, in any calendar year; provided that the earnings therefrom when added to any pension or retirement allowance he is receiving do not exceed the salary that is being paid for the position from which he was retired or in which his employment was terminated.

---

[2] In 2009, an amendment added "authority" to the listed entities. St. 2009, c. 21, § 20. The amendment was applicable to people retiring after July 1, 2009. Id., § 26.

G. L. c. 32, § 91(b).[3]

Section 91(c) contains a certification requirement, and sets forth the procedures for the return of funds earned by a retiree in excess of the allowable amount under § 91(b). The 2005 version of § 91(c) provided:

> Each person referred to in paragraph (b) shall certify to his employer and the treasurer or other person responsible for the payment of the compensation for the position in which he is to be employed, the number of days or hours which he has been employed in any such calendar year and the amount of earnings therefrom, and if the number of hours exceeds [960] in the aggregate, he shall not be employed, or if the earnings therefrom exceed the amount allowable under paragraph (b), he shall return to the appropriate treasurer or other person responsible for the payment of compensation all such earnings as are in excess of said allowable amount. The amount of any excess not so returned may be recovered in an action of contract by the appropriate treasurer or other person responsible for the payment of the compensation of any such person.

G. L. c. 32, § 91(c). Bristol Cnty. Retirement Bd., 65 Mass. App. Ct. at 447-448.

Relevant Background Facts of Record

The following is taken from the DALA decision, (Administrative Record (AR) 1660-1696) and the CRAB decision (AR 1851-1875), adopting DALA's findings of fact. (Record).

Barranco's Role at MEC and the Collaborative

The Collaborative was established in 1976 by school committees in Billerica, Chelmsford, Dracut, Groton-Dunstable, Tewksbury, Tyngsboro, and Westford under G. L. c. 40, § 4E, which allows two or more public school committees to form a public association. AR

[3] In 2009, paragraph (b) was amended to read as follows: "In addition to and notwithstanding the foregoing provisions of this section or similar provisions of any special law, any person who has been retired and who is receiving a pension or retirement allowance, under the provisions of this chapter or any other general or special law, from the commonwealth, county, city, town, district or authority, ...may, subject to all laws, rules and regulations, governing the employment of persons in the commonwealth, county, city, town, district or authority, be employed in the service of the commonwealth, county, city, town, district or authority, including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours for not more than [960] hours in the aggregate .... See St. 2009, c. 21, § 21 (emphasis added). The amendment was applicable to those retiring after July 1, 2009. See St. 2009, c. 21, § 26.

1663 (Finding of Fact (FF) 3). The Collaborative's mission is to provide educational, vocational, and therapeutic programs for children and adults with special needs. AR 1663 (FF 3). A collaborative's board of directors is a "public employer," G. L. c. 40, § 4E(f), and the collaborative itself is a "public entity." G.L. c. 40, § 4E(h).

MEC is a private nonprofit entity formed in 1977. AR 1663 (FF 2). It offers schools a broad range of professional development, facilities management and technology programs and solutions, as well as transportation for special needs students. AR 1663 (FF 2). In 1991, MEC began providing administrative services to the Collaborative pursuant to written agreements. AR 1664 (FF 7), 1668 (FF 17). The two organizations became deeply connected. See generally AR 1662-1676. Indeed, at times, MEC described the Collaborative as an MEC division. AR 1663 (FF 4).

From 1993 until 2005, Barranco served as the Executive Director of both the Collaborative and MEC. AR 1662 (FF l). In 2005, Barranco retired from the Collaborative, but not from MEC. AR 1662 (FF 1), 1666 (FF 11). After his retirement, Barranco continued to provide services to the Collaborative in his role as MEC's Executive Director, including the handling of the Collaborative's financial and budgetary affairs. AR 1662 (FF l), 1666 (FF 12), 1667 (FF 13); AR 1662-1676.

In June 2006, the Collaborative and MEC entered into an Administrative Services and License Agreement (ALSA) under which MEC agreed to continue providing services to the Collaborative. AR 1668 (FF 17). Among other things, the ASLA stated that administrative staff services would be allocated based on revenue. AR 1669 (FF 18). As a result, a portion of the expense of Barranco's salary was allocated to the Collaborative. AR 1669 (FF 18). For fiscal years 2006-2007 and 2007-2008, 55% of Barranco's salary was allocated to the Collaborative.

AR 1669 (FF 18). The Collaborative and MEC entered into a new Administrative Services and License Agreement in 2009. AR 1672 (FF 27). Administrative staff services continued to be allocated based on revenue under the agreement. AR 1672 (FF 27).

The MTRS and DALA Decisions

In April 2009, MTRS began an inquiry into whether Barranco's MEC earnings violated G. L. c. 32, § 91's earning limits. AR 1673 (FF 29). After an informal hearing, a hearing officer issued a report in December 2010 in which he concluded that Barranco had violated G. L. c. 32, § 91, and that 25% of Barranco's MEC compensation was attributable to services Barranco provided the Collaborative. AR 1673-1674 (FF 29). Barranco timely appealed this determination. AR 1674 (FF 29).

The Office of the Inspector General of the Commonwealth (OIG) sent a letter to MTRS in April, 2011, informing MTRS that OIG had been investigating the Collaborative and MEC. OIG stated that it had uncovered matters that might be appropriate for administrative action. AR 1674 (FF 30). In particular, OIG notified MTRS OIG had obtained documents showing that, after Barranco's retirement from the Collaborative, MEC charged 55% of Barranco's MEC salary to the Collaborative. AR 1674 (FF 30). MTRS reopened the hearing. AR 1674 (FF 31). In June 2011, Barranco left his position as MEC Executive Director. AR 1675 (FF 33).

On October 2011, the MTRS hearing officer issued a second decision, attributing 55% of Barranco's MEC compensation to service to the Collaborative. AR 1674-1675 (FF 31-32). Barranco timely appealed. AR 1675 (FF 32). A DALA magistrate held a multi-day hearing on Barranco's appeal in 2013. Barranco did not testify at that hearing. AR 1661-1662, 1853 n.4. DALA upheld the MTRS determination. AR 1660.

The CRAB Decision

Barranco timely appealed the DALA decision to CRAB. AR 1851. By decision dated January 8, 2020 (Decision) CRAB adopted DALA's finding of facts and affirmed DALA's decision. AR 1852. CRAB summarized its Decision as follows:

> We agree that Barranco was subject to, and exceeded, the G. L. c. 32, § 91 limitations on post-retirement earnings from service to public entities in Massachusetts in calendar years 2006-2010. In particular, we reaffirm the longstanding holdings by the courts, DALA, and this Board that retirees from public positions in Massachusetts who are "paid for any service rendered" to a Massachusetts public entity after their retirement must observe the limitations on hours worked and amounts earned imposed under § 91, regardless of whether they are acting as independent contractors or as employees. We also agree that the extensive record complied by MTRS – and essentially unrebutted by Barranco – supported its finding that 55 percent of Barranco's post-retirement earnings at MEC was attributable to services provided to the Collaborative and that the recoupment of those excess earnings by MTRS was proper under established law.

AR 1852 (footnotes omitted).

Applicable Scope of Review

"It is well established that judicial review of a CRAB decision pursuant to G. L. c. 30A, § 14, is narrow." Murphy v. Contributory Retirement Appeal Bd., 463 Mass. 333, 344, (2012). "While [the court] review[s] questions of law de novo, [it] nonetheless 'typically defer[s] to CRAB's expertise and accord[s] great weight to its interpretation and application of the statutory provisions it administers'" Young v. Contributory Retirement Appeal Bd., 486 Mass. 1, 5, (2020), quoting Plymouth Ret. Bd. v. Contributory Retirement Appeals Bd., 483 Mass. 600, 604, (2019).[4] The court "will reverse or amend CRAB's decision only if it is arbitrary or capricious,

[4] Multiple Appeals Court decisions suggest that, in the retirement area in particular, courts may be more deferential than in the context of other c. 30A review. Haverhill Retirement System v. Contributory Retirement Appeal Bd., 82 Mass. App. Ct. 129, 131 (2012)("[w]e typically defer to CRAB's expertise and accord great weight to [its] interpretation and application of the statutory provisions it is charged with administering") (quotations omitted); Kozloski v. Contributory Retirement Appeal Bd., 61 Mass. App. Ct. 783, 786 (2004)("In the notoriously difficult, sometimes tortuous, field of retirement rights and calculations, there is particular reason for giving deference to [CRAB's] expertness.")(quotations omitted); Kaplan v. Contributory Retirement Appeal Bd., 51 Mass. App. Ct. 201, 205-206 (2001)("[W]e habitually refrain from substituting our judgment for that of CRAB where its interpretation is reasonable."); Namay v. Contributory Retirement Appeal Bd., 19 Mass. App. Ct. 456, 463 (1985)("The retirement law is notoriously complex, and in construing the effect of the provision in question, the

based upon an error of law or unlawful procedure, unwarranted by the facts found by the agency …, or unsupported by substantial evidence." Id., citing G. L. c. 30A, § 14(7); Lydon v. Contributory Retirement Appeal Bd., 101 Mass. App. Ct. 365, 366-367 (2022). It is the plaintiff's burden to demonstrate CRAB's Decision is invalid. Massachusetts Ass'n of Minority Law Enforc. Offs. v Abban, 434 Mass. 256, 263-264 (2001).

Discussion

Barranco contends CRAB committed two errors of law: (1) its conclusion that G. L. c. 32, § 91 applied to Barranco and his work for the Collaborative at MEC; and (2) its determination MTRS had the authority to recoup excess earnings. Barranco also claims CRAB lacked substantial evidence for its calculation of the portion of his post-retirement earnings attributable to his work for the Collaborative, and that the CRAB Decision violates his constitutional property rights. Each of these arguments lacks merit. Given the substantial deference the court must accord CRAB, Barranco has not met his heavy burden to demonstrate CRAB's Decision is invalid, and the Decision must be **affirmed**.

Applicability of G. L. c. 32 § 91 to Barranco and His Work for the Collaborative

Barranco's arguments on errors of law implicate statutory interpretation.

Barranco first argues CRAB wrongly concluded the statute applies to: (1) education collaboratives, like the Collaborative; and (2) independent contractors like him. In addressing these contentions, I apply the well-established rules of statutory interpretation, which the Supreme Judicial Court (SJC) recently re-articulated: "We reaffirm the long-held principle of statutory interpretation that we interpret a statute to effectuate the Legislature's intent, looking

court would hope to have the benefit of the experience of the appeal board. Courts look for and will normally accord great weight to an administrative agency's interpretation — particularly if long standing — of the law which the agency is charged to administer.").

at words' 'plain meaning' in light of 'sources presumably known to the statute's enactors, such as their use in other legal contexts.'" Commonwealth v. Rossetti, 489 Mass. 589, 593 (2022), and case cited. With this principle in mind, I am not persuaded by Barranco's contentions.

CRAB reasonably concluded that education collaboratives are covered by the statute. Lydon, 101 Mass. App. Ct. at 371, quoting State Bd. of Retirement v. Contributory Retirement Appeal Bd., 77 Mass. App. Ct. 452, 455 (2010)("Where [CRAB's] construction of a statute is reasonable, [we do] not supplant it with [our] own interpretation."). Collaboratives are not among the entities expressly listed in § 91(a), which forbids payment to a retiree "for any service rendered to the commonwealth or any county, city, town or district."[5] However, collaboratives are public entities under G. L c. 40, § 4E, and are joint projects of their member municipalities and school districts. Therefore, work for the Collaborative was necessarily the provision of a service to those entities, all of which are expressly included in § 91(a). AR 1862-1863.

To the extent Barranco implies that § 91(a) is somehow irrelevant for purposes of determining whether the statute applies to him, and that the court must focus only on § 91(b), I disagree. That argument misconstrues the relationship between § 91's first two paragraphs. As explained above, § 91(a) expresses a general categorical prohibition, while § 91(b) creates an exception to the general prohibition subject to earnings limitations. Flanagan, 51 Mass. App. Ct. at 867, quoting Rep. A.G., Pub. Doc. No. 12, at 155 (1979)("§ 91(b) is 'an exception to the long-established, general prohibition of § 91(a)'"). Thus, to determine whether § 91 applies to Barranco, the proper focus must be on the language of § 91(a), read in light of § 91's other provisions.

---

[5] Unless otherwise stated, all references to G. L. c. 32, § 91 are to the statute as it existed in 2005, when Barranco retired.

In support of his argument that educational collaboratives are beyond the scope of the statute, Barranco points to the two 2009 amendments to Chapter 32. As indicated in notes 2 and 3 above, the Legislature amended § 91(a) to include an "authority" among the public entities in the phrase "from any county, city, town, or district." St. 2009, c. 21, § 20. It also amended § 91A to include the phrase "other member unit of a retirement system" among the listed public entities. St. 2009, c. 21, § 17. Barranco points to the definition of public employer in G. L. c. 258, § 1 (which expressly includes educational collaboratives), and two other session laws that concerned collaboratives (St. 1985, cc. 641 & 741). He argues these other provisions demonstrate that, if the Legislature had intended to include educational collaboratives within the scope of § 91, it would have done so expressly. Here again, I disagree.

None of these references suggests the Legislature intended the reading advocated by Barranco of the statute before me.[6] This is not a situation where the Legislature used the term "educational collaborative" elsewhere within other sections of Chapter 32, in a manner implying exclusion of that term in § 91 was purposeful. Contrast State Bd. of Retirement v. Woodward, 446 Mass. 698, 706 (2006)("Where the Legislature used the term 'action of contract' elsewhere in G. L. c. 32, but not in § 15, we do not construe proceedings under § 15 as being an action in contract."); Essex Reg'l Retirement Bd. v. Swallow, 481 Mass. 241, 252-253 (2019)("there is no indication that the Legislature intended [G. L. c. 32,] § 15(4) to be triggered by a violation of a rule, regulation, professional oath, code of conduct, or other internal practice or policy that does not have the force of law. Had the Legislature so intended,

---

[6] G. L. c. 258 is particularly inapposite, as it functions as a waiver of sovereign immunity, a waiver that cannot be implied. The Legislature must be explicit when it intends for certain entities to be subject to that waiver. Grand Manor Condo. Ass'n v. Lowell, 100 Mass. App. Ct. 765, 770 (2022); DeRoche v. Massachusetts Comm'n against Discrimination, 447 Mass. 1, 12-13 (2006); Woodbridge v. Worcester State Hosp., 384 Mass. 38, 42 (1981). The fact that the Legislature included educational collaboratives in G. L. c. 258, § 1 is of no moment to CRAB's Decision here.

it certainly could have included language to that effect, as it did in a preceding section."). Nor is this a situation where CRAB's proffered interpretation is inconsistent with the plain language of the statute or its purpose. To the contrary, by my reading CRAB's conclusion that educational collaboratives are covered by § 91 is entirely consistent with both the statute's language and its purpose. Gorman v. Contributory Retirement Appeal Bd., 67 Mass. App. Ct. 123, 128 (2006)(affirming where CRAB's interpretation of statute was reasonable and "in accord with the purposes underlying the pension recoupment standards" of section 91A); Lydon, 101 Mass. App. Ct. at 371 ("Where [CRAB's] construction of a statute is reasonable, [we do] not supplant it with [our] own interpretation.").

Accepting Barranco's interpretation would lead to an illogical result. Based on that interpretation, post-retirement earnings from education services provided directly to a city, town, or school district would be subject to § 91, but the same education services provided to the same entities through an educational collaborative would not. Sullivan v. Town of Brookline, 435 Mass. 353, 360 (2001)("statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result"); Lydon, 101 Mass. App. Ct. at 371 n.4 (deferring to CRAB's expertise in interpretation of G. L c. 32 "particularly" where that interpretation "aligns with the Legislature's ultimate goal in enacting" the statute); Cf. Pellegrino, 69 Mass. App. Ct. at 98-99 (rejecting argument that Springfield Parking Authority employee not subject to § 91 because it was not listed as one of the entities § 91(a)). Such inconsistency would only serve to undermine the purposes of the statute.

CRAB also reasonably concluded that work by independent contractors falls within the scope of the statute. See AR 1855-1861. The use of the expansive phrase "any service" in

§ 91(a) plainly indicates its general prohibition applies to work beyond that provided by an employee. This reading is supported by the fact that G.L. c. 32, § 91(a) establishes a limited exception for "contractual service, or service as a nonemployee, rendered to the general court," but no other contractors. It is also consistent with decisions from the Appeals Court interpreting the statute in a manner that suggests it applies to those who are not directly employed by a public entity. Pellegrino, 69 Mass. App. Ct. at 99 (observing that "§ 91(a) generally prohibits anyone who is receiving a city or State pension not only from being employed by the city, but also from being 'paid for any *service* rendered' thereto")(emphasis in original); Flanagan, 51 Mass. App. Ct. at 868 (although the court did not to consider whether § 91 applied to independent contractors because the issue was not been properly before it, it noted the language establishing a limited exception for services rendered to the general court, and that "there is no exception for other contractors.").

Barranco asserts the Legislature's amendment of § 91(b) in 2009 to include "independent contractors" and "consultants" means such service providers were not covered by § 91 before 2009. But as CRAB recognized, the amendment did not make a similar change to the general prohibition on post-retirement services to Massachusetts public entities in § 91(a). AR 1860. Instead, the amendment merely clarified that consultants and independent contractors could take advantage of the blanket exception in § 91(b), but were subject to its limitations on earnings. If anything, the amendment supports a fair reading that independent contractors and consultants have always been subject to § 91(a). The Legislature would have had no reason explicitly to expand the exception in § 91(b) if the general prohibition did not already apply to those groups. To the extent Barranco suggests CRAB interpreted the

amendments retroactively to apply to him to his detriment, nothing in the Record supports that position.

Barranco also appears to suggest that the use of the phrase "be employed in the service of the commonwealth" in § 91(b) supports a different reading of § 91(a). I cannot agree. CRAB reasonably interpreted the word "employed" to mean "occupied" or "engaged," and therefore determined that phrase to have a meaning similar to the "service rendered" language in § 91(a). AR 1857-1858.[7]

Validity of Recoupment

Barranco also raises two arguments about recoupment that would appear to fall into the "errors of law" category. First Barranco contends recoupment by MTRS violates G. L. c. 32, § 19. Section 19 provides:

> The rights of a member to an annuity, pension or retirement allowance, such annuity, pension or retirement allowance itself, and all his rights in the funds of any system established under the provisions of such sections, shall be exempt from taxation, including income taxes levied under the provisions of chapter sixty-two, and from the operation of any law relating to bankruptcy or insolvency and shall not be attached or taken upon execution or other process.

G. L. c. 32, § 19. The section goes on to provide certain exceptions. Barranco asserts that the failure to carve out an exception for administrative attachments indicates that the Legislature did not intend to permit entities like MTRS to recoup pension funds. In support of this argument, Barranco relies on Utley v. Utley, 355 Mass. 469, 470-471 (1969), in which the SJC

---

[7] In further support of his assertion that the statute does not apply to him, Barranco offers an explanation as to the origins of the 2009 amendments to G. L c. 32, makes a "symmetry" argument about compensation, and addresses the definition of the term "service" in G. L. c. 32, § 1. I have also considered these arguments but find them unavailing. Ingalls v. Bd. Of Registration in Medicine, 445 Mass. 291, 295 n.3 (2005)("We have considered, but need not address, every argument the plaintiff has advanced in support of his interpretation of the regulation.").

described Section 19 as "unambiguous and comprehensive," and therefore declined to create an equitable exception to the statute.

I rule CRAB reasonably concluded that MTRS may permissibly recoup Barranco's excess earnings. As CRAB recognized, see AR 1869-1872, the Appeals Court has twice held that retirement boards have the authority under G. L. c. 32, § 20(5)(b) to recover pension benefits received in violation of G. L. c. 32, § 91, by setting off the overpayments from subsequent retirement distributions. Flanagan, 51 Mass. App. Ct. at 866-668; Bristol Cnty. Retirement Bd., 65 Mass. App. Ct. at 448, 452 (observing that "[w]e … determined [in Flanagan] that, in the absence of a return of such amounts to the employing agency, the excess earnings may be recovered by the retirement board that pays the employee his pension," and holding that the "county board may lawfully recoup the amount in question").

Although neither Flanagan nor Bristol Cnty. Retirement Bd. discuss G. L c. 32, § 19, the reasoning in Flanagan suggests our appellate courts would likely reject Barranco's assertion that G. L. c. 32, § 19 prohibits recoupment. The Appeals Court explained in Flanagan that finding a board had no authority to recoup the excess benefits would lead to an absurd result, because it would leave no legitimate mechanism for enforcing the intent of the Legislature. There can be no dispute that the Legislature sought to provide a limited opportunity for compensated employment to retired persons -- as distinct from providing retirement benefits to employed persons – because "it is the retirement board, serving thousands of other retirees that has reason to enforce the law by recouping pension payments which violate the clear and longstanding intent of the retirement law." Flanagan, 51 Mass. App. Ct. at 867-868.[8]

[8] Barranco's attempt to distinguish Flanagan because Barranco provided his services to the Collaborative through the private entity MEC is unavailing. The Appeals Court's analysis did not turn on the fact that Flanagan was a consultant for public entity Bristol County. The same enforcement concerns highlighted in

By my reading G. L. c. 32, § 19 is not aimed at the recoupment of unlawful compensation from a public entity, but rather at preventing an offset of a separate debt against the retirement benefit. While § 19 prohibits seizure of pension funds to satisfy a judgment, it does not prevent a retirement system from exercising its authority under G. L. c. 32, § 20(5)(b).[9]

Second, Barranco argues that recoupment by MTRS violates his property-based rights as set forth in the Declaration of Rights. In support of this position, he cites Public Emp. Retirement Admin. Comm'n v. Bettencourt, 474 Mass. 60, 67 (2016) in which the SJC observed the "long held . . . view that a public employee who is a member of a retirement system holds an interest in retirement benefits that originates in a 'contract' and in substance amounts to a property right." This argument also fails.

Barranco "was on notice by virtue of the statute that his receipt of retirement benefits came with the condition that additional earnings from government employment would be limited." Bristol Cnty. Retirement Bd., 65 Mass. App. Ct. at 448. He agreed to this statutory limitation by accepting his retirement benefits. National Ass'n of Gov't Emps. v. Commonwealth, 419 Mass. 448, 454 (1995), quoting Feakes v. Bozyczko, 373 Mass. 633, 636 (1977)("As a general rule, the law existing at the time an agreement is made necessarily enters into and becomes part of the agreement."). His contractual/property rights were not impaired by the recoupment, because recoupment is consistent with the material expectations created by the retirement scheme. Public Emp. Retirement Admin. Comm'n, 474 Mass. at 67, quoting Opinion of the Justices, 364 Mass. 847, 861 (1973)(explaining that although the relationship

---

Flanagan are implicated when the retiree is providing services to a public entity through a private entity as was the case here.

[9] Barranco separately argues recoupment is contrary to G. L. c. 32, § 13(1). I have considered this argument and find it without merit. It fails largely for the same reasons discussed above.

between a member and a retirement system is contractual, the term contract in this context "is best understood as meaning that the retirement scheme has generated material expectations on the part of employees and those expectations should in substance be respected.").

Substantial Evidence/Calculation of Barranco's Post Retirement Earnings

Barranco claims CRAB did not possess substantial evidence when calculating the portion of his post-retirement earnings attributable to his work for the Collaborative, based on three arguments. I find none of the three persuasive.

First, Barranco argues CRAB: (1) improperly allocated 55% of his total MEC compensation (salary and bonus) as represented in his W-2 forms, rather than 55% of his MEC salary as provided for in the 2006 ASLA; and (2) failed to take into account an April 20, 2011 letter from the OIG in which the OIG noted the Collaborative ceased reimbursing Barranco's salary after April 2009 (see AR 448).[10]

As noted above, G. L. c. 32, § 91(a) prohibits a retiree from receiving payment "for any service rendered to the commonwealth or any county, city, town or district" regardless of the source of such payment. Thus, in determining how much MTRS could recoup, CRAB needed to calculate the monetary value of Barranco's services to the Collaborative from 2005 to 2010, irrespective of whether the funds he was paid ultimately came from MEC or the Collaborative. CRAB was not required strictly to limit itself to the payment arrangement detailed in the 2006 ASLA. Rather, CRAB could, and did, reasonably conclude -- based on the substantial evidence contained in the 2006 ASLA; "allocation sheets" for fiscal years 2006-2007 and 2007-2008; and other evidence before it regarding Barranco's duties -- that 55% of Barranco's work at MEC consisted of Collaborative matters between 2005 and 2010, and therefore 55% of his

[10] In the letter, the OIG wrote: "MEC stopped charging [the Collaborative] for a portion of Mr. Barranco's salary after the MTRS began its inquiry in April 2009." AR 448.

compensation was earned for that work in violation of the statute. AR 1865-1869 & n. 65. These findings by CRAB were neither irrational nor speculative.

Barranco next argues "CRAB . . . erred by holding that [he] had the burden of proof to show that 55 percent of his salary was for services rendered to the Collaborative. . . . MTRS, as moving party, bore the burden of production and persuasion on the issue of over earnings." Paper 18 at page 21-22. CRAB did not misallocate the burden. MTRS made a prima facie showing that Barranco had excess earnings, and that 55% of his post-retirement compensation from MEC was attributable to services he provided to the Collaborative. AR 1863. CRAB reasonably recognized that: burden shifting at this stage is consistent with appellate decisions placing the burden of proof on the petitioner to show causation in accidental disability claims under the retirement law; the general preference is for placing the burden of proof on the party with the greatest access to relevant records and evidence, here Barranco; and it is a retiree's responsibility under § 91(c) to report his or her hours and earnings from public employment. AR 1863-1865. I agree the burden shifting was proper under all of the circumstances of this case.

Last, Barranco argues CRAB erred by drawing a negative inference from his failure to testify. Paper 18 at page 22, citing AR 1867 n. 58. Again I must disagree. In its Decision, CRAB stated: "We agree with the magistrate that [the] evidence, unrebutted by any evidence from Barranco that his duties changed from 2008-2010, was sufficient to show that he continued to perform the same services for the Collaborative from 2005-2010." AR 1867. It then noted:

> "[A]n adverse inference is permissible from Barranco's failure to provide evidence in rebuttal. ... See generally Graves v. R.M. Packer Co., 45 Mass. App. Ct. 760, 770 (1998)(adverse interest permitted from failure to call person with best knowledge of facts); A.P. v. M.T., 92 Mass. App. Ct. 156, 166 (2017)(adverse inference permitted

where defendant failed to testify in civil matter, "even if criminal proceedings are pending or might be brought")."

AR 1867 n. 58. Given that Barranco was the Executive Director of MEC, and therefore had substantial knowledge of its operations and his own duties, CRAB did not abuse its discretion in drawing the adverse inference here. McGinnis v. Aetna Life & Cas. Co., 398 Mass. 37, 39 (1986)("We have long recognized that, in a civil action, once the party having the burden of proof has presented a prima facie case, it is proper to argue to a jury that the party not having the burden of proof did not testify on a matter apparently within that party's knowledge. … Although the adverse inference drawn from the failure of a party to testify is not sufficient, by itself, to meet an opponent's burden of proof, the trier of fact may rely in part on such an inference if a case adverse to a nontestifying party's interests has been presented.")(quotations and citations omitted).

Conclusion

For all of the reasons stated, Plaintiff John Barranco's Motion for Judgment on the Pleadings (Paper 17) is **DENIED**, and the Cross-Motions for Judgment on the Pleadings brought by the Contributory Retirement Appeal Board (Paper 19), and the Massachusetts Teachers Retirement System (Paper 21) are each **ALLOWED**.

SO ORDERED.

Dated: August 8, 2022

Christine M. Roach

2084CV00311 Barranco, John B vs. Contributory Retirement Appeal Board et al

- Case Type:
- Administrative Civil Actions
- Case Status:
- Open
- File Date
- 02/03/2020
- DCM Track:
- X - Accelerated
- Initiating Action:
- Appeal from Administrative Agency G.L. c. 30A
- Status Date:
- 08/15/2022
- Case Judge:
-
- Next Event:
-

All Information | Party | Event | Tickler | Docket | Disposition

Party Information

Barranco, John B
- Plaintiff

Alias

Party Attorney
- Attorney
- Kiley, Esq., Thomas Robert
- Bar Code
- 271460
- Address
- CEK Boston, P.C.
  One International Place
  Suite 1620
  Boston, MA 02110
- Phone Number
- (617)439-7775
- Attorney
- Poser, Esq., Nicholas
- Bar Code
- 546102
- Address
- Law Office of Nicholas Poser
  48 Franklin St
  WATERTOWN, MA 02472
- Phone Number
- (617)437-1779

More Party Information

Contributory Retirement Appeal Board
- Defendant

Alias

Party Attorney
- Attorney
- Marks, Esq., David R
- Bar Code
- 548982
- Address
- Office of the Attorney General
  1 Ashburton Place
  Boston, MA 02108
- Phone Number
- (617)963-2362
- Attorney
- Martland, Esq., Douglas Shreve
- Bar Code
- 662248
- Address
- Massachusetts Office of the Attorney General
  One Ashburton Place

20th Floor
Boston, MA 02108
- Phone Number
- (617)963-2062

More Party Information

Teachers Retirement Board
- Defendant

Alias

Party Attorney
- Attorney
- Freeman, Esq., Ashley E
- Bar Code
- 681249
- Address
- 500 Rutherford Ave
  Suite 210
  Charlestown, MA 02129
- Phone Number
- (617)679-6864

More Party Information

Events

Date	Session	Location	Type	Event Judge	Result
02/08/2022 02:00 PM	Civil H	BOS-10th FL, CR 1015 (SC)	Hearing for Judgment on Pleading	Krupp, Hon. Peter B	Rescheduled
05/05/2022 03:00 PM	Civil B	BOS-3rd FL, CR 306 (SC)	Hearing for Judgment on Pleading	Roach, Christine M	Held via Video/Teleconference

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	02/03/2020	05/04/2020	91	
Judgment	02/03/2020	02/02/2021	365	08/15/2022

Docket Information

Docket Date	*Docket Text*	File Ref Nbr.	*Image Avail.*
02/03/2020	Attorney appearance On this date Nicholas Poser, Esq. added for Plaintiff John B Barranco		
02/03/2020	Attorney appearance On this date Thomas Robert Kiley, Esq. added for Plaintiff John B Barrenco		
02/03/2020	Case assigned to: DCM Track X - Accelerated was added on 02/03/2020		
02/03/2020	Original civil complaint filed.	1	Image
02/03/2020	Civil action cover sheet filed. (N/A) (TRK)	2	Image
02/24/2020	Attorney appearance On this date Ashley E Freeman, Esq. added for Defendant Teachers Retirement Board		
03/04/2020	Received from Defendant Contributory Retirement Appeal Board: Answered;	3	Image
03/04/2020	Attorney appearance On this date David R Marks, Esq. added for Defendant Contributory Retirement Appeal Board		
03/04/2020	Attorney appearance On this date Douglas Shreve Martland, Esq. added for Defendant Contributory Retirement Appeal Board		
03/09/2020	Service Returned for Defendant Contributory Retirement Appeal Board: Service via certified mail;	4	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/09/2020	Service Returned for Defendant Teachers Retirement Board: Service made via regular mail;	5	Image
07/20/2020	Defendant Contributory Retirement Appeal Board's Assented to Motion to Extend Time to File the Administrative Record to and including October 29, 2020	6	Image
08/03/2020	Endorsement on Motion to Extend Time to File the Administrative Record (#6.0): ALLOWED (dated 7/28/20) notice sent 7/31/20		Image
11/19/2020	Answer to original complaint	7	Image
11/19/2020	Answer to original complaint	8	Image
11/19/2020	Answer to original complaint	9	Image
11/19/2020	Answer to original complaint	10	Image
11/19/2020	Answer to original complaint	11	Image
12/16/2020	Plaintiff John B Barranco's Assented to Motion to Enlarge Time to File his Motion for Judgment on the Pleading Pursuant to Superior Court Standing Order 1-96 to March 15, 2020	12	Image
01/15/2021	Endorsement on Motion to Enlarge Time to File his Motion for Judgment on the Pleading Pursuant to Superior Court Standing Order 1-96 to March 15, 2020 (#12.0): ALLOWED (Date 12/31/20) Allowed Notice 1/11/21		Image
03/10/2021	Plaintiff John B Barranco's Assented to Motion for Enlarge Time to File Motion for Judgment on the Pleadings Pursuant to Standing Order 1-96 to May 15, 2021	13	Image
05/10/2021	Plaintiff John B Barranco's Assented to Motion to enlarge time to file his motion for judgment on the pleading pursuant to Superior Court standing Order 1-96 to June 30, 2021	14	Image
05/20/2021	Endorsement on Motion to enlarge time to file his motion for judgment on the pleading pursuant to Superior Court standing Order 1-96 to June 30, 2021 (#14.0): ALLOWED no further extensions without a hearing. (dated 5/13/21) notice sent 5/20/21 Judge: Buckley, Hon. Elaine M		Image
07/26/2021	Defendant Contributory Retirement Appeal Board, Teachers Retirement Board's Joint Motion to Extend Time to Serve the Defendants' Oppositions to Plaintiff's Motion for Judgment on the Pleadings (Assented To)	15	Image
08/06/2021	Endorsement on Motion to Extend Time to Serve the Defendants' Oppositions to Plaintiff's Motion for Judgment on the Pleadings (Assented To) (#15.0): ALLOWED (dated 7/28/21) notice sent 08/03/21		Image
10/20/2021	Defendant Contributory Retirement Appeal Board, Teachers Retirement Board's Assented to, Joint Motion to further extend time to Serve the Defendants' Oppositions to Plaintiff's Motion for Judgment on the Pleadings	16	Image
10/27/2021	The following form was generated: Notice to Appear Sent On: 10/27/2021 10:07:20 Notice Sent To: Nicholas Poser, Esq. Law Office of Nicholas Poser 197 Portland St 5th Floor 5th Floor, Boston, MA 02114 Notice Sent To: Thomas Robert Kiley, Esq. CEK Boston, P.C. One International Place Suite 1820, Boston, MA 02110 Notice Sent To: David R Marks, Esq. Office of the Attorney General 1 Ashburton Place, Boston, MA 02108 Notice Sent To: Douglas Shreve Martland, Esq. Massachusetts Office of the Attorney General One Ashburton Place 20th Floor, Boston, MA 02108 Notice Sent To: Ashley E Freeman, Esq. 500 Rutherford Ave Suite 210, Charlestown, MA 02129		
11/03/2021	Endorsement on Motion of Further Extend Time to Serve Oppositions to Motion for Judgment on the Pleadings (#16.0): ALLOWED Defendants shall serve their response(s) - oppositions, cross-motion(s)- by 12/10/21. Any reply or opposition to defendant's response(s) shall be served by 1/12/22. The combined documents related to the motion for Judgment on the Pleadings shall be filed by 1/21/22. The court shall hear argument on the motion(s) for Judgment on the pleadings on 2/8/22 at 2:00pm (dated 10/25/21) notice sent 10/29/21		Image
01/21/2022	Plaintiff John B Barranco's Motion for Judgment on the Pleadings	17	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/21/2022	John B Barranco's Memorandum in support of Plaintiffs Motion for Judgment on the Pleadings	18	Image
01/21/2022	Contributory Retirement Appaal Board's Memorandum in support of Its Cross Motion for Judgment on the Pleadings and in Opposition to Plaintiffs Motion for Judgment on the Pleadings	20	Image
01/21/2022	Opposition to to Plaintiffs Motion for Judgment on the Pleadings and Cross Motion for Judgment on the Pleadings filed by Teachers Retirement Board	21	Image
01/21/2022	Reply/Sur-reply Plaintiff John Barrancos Reply to Defendant Contributory Retirement Appeal Boards Opposition to Motion for Judgment on the Pleadings	22	Image
01/21/2022	Plaintiff John B Barranco's Notice of Filing		Image
01/21/2022	Plaintiff John B Barranco's Submission of List of Documents		Image
01/21/2022	Plaintiff John B Barranco's Certificate of Service		Image
01/21/2022	Defendant Contributory Retirement Appeal Board's Motion for Judgment (Cross)	19	
01/25/2022	Reply/Sur-reply Plaintiff John Barranco's Reply to Defendant Massachusetts Teachers Retirement Systems Opposition to Motion for Judgment on the Pleadings	23	
01/31/2022	Event Result:: Hearing for Judgment on Pleading scheduled on: 02/08/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Peter B Krupp, Presiding Staff: Steven J Masse, Assistant Clerk Magistrate		
01/31/2022	The following form was generated: Notice to Appear Sent On: 01/31/2022 09:34:18		
05/05/2022	Event Result:: Hearing for Judgment on Pleading scheduled on: 05/05/2022 03:00 PM Has been: Held via Video/Teleconference Christine M Roach, Presiding Staff: Christine M Hayes, Assistant Clerk		
08/10/2022	Endorsement on Motion for Judgement on the Pleadings (#17.0): DENIED Following hearing and review, motion DENIED. Please see memorandum and ruling of this date. (Roach, J.) 08/08/2022		Image
08/10/2022	Endorsement on Motion for Judgement on the Pleading's - Cross Motion (#19.0): ALLOWED Following hearing and review, motion ALLOWED. Please see memorandum and ruling as of this date. 08/08/2022 (Roach, J.) Applies To: Contributory Retirement Appeal Board (Defendant)		Image
08/10/2022	Endorsement on Motion for Judgement on the Pleading's and Cross Motion for Judgement on the Pleading's (#21.0): ALLOWED Following hearing, motion ALLOWED. Please see memorandum and ruling of this date. (Roach, J.) 08/08/22		Image
08/10/2022	MEMORANDUM & ORDER: Memorandum of Ruling on Cross-Motion's for Judgement on the Pleading's (Papers 17, 19, & 21) Judge: Roach, Christine M	24	Image
08/15/2022	JUDGMENT on the Pleadings entered: After hearing and consideration thereof; It is ORDERED and ADJUDGED: that the Defendant Contributory Retirement Appeal Board's Cross-Motion for Judgment on the Pleadings and the Defendant Massachusetts Teachers Retirement System's Cross-Motion for Judgment on the Pleadings are each ALLOWED. The Plaintiff John Barranco's Motion for Judgment on the Pleadings is	25	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	DENIED and this matter is DISMISSED. entered on docket pursuant to Mass R Civ P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d)		
10/06/2022	Plaintiff John B Barranco's Notice of Appeal	26	Image
10/06/2022	Notice of appeal filed. (See p#26) Notice sent 10/7/22 Applies To: Barranco, John B (Plaintiff)		
10/14/2022	Notice of non-intention to order Transcript		Image
02/23/2023	Notice of assembly of record sent to Counsel		
02/23/2023	Notice to Clerk of the Appeals Court of Assembly of Record		
03/01/2023	Notice of Entry of appeal received from the Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case (2023-P-0217) was entered in this Court on February 27, 2023.	27	Image

Case Disposition

Disposition	Date	Case Judge
Judgment after Finding on Motion	08/15/2022	